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IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

J. GERARD HOGAN, *et al.*,
Petitioners,
v.

MARK E. MUSOLF, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of Wisconsin

SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

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Petitioners respectfully invite the Court's attention to the following new matters which have arisen since the filing of the petition in this case. A petition for writ of certiorari was docketed in this Court on September 17, 1991 in the *Davis*-related case of *Nutbrown v. Munn*, 311 Or. 328, 811 P.2d 131 (1991), *petition for cert. filed*, No. 91-457. The questions presented by the *Nutbrown* petition are substantially similar to questions presented by this case.¹

On September 9, 1991, the Supreme Court of Tennessee announced its decision in the case of *L.L. Bean, Inc. v. Bracey*, 1991 WL 172407 (Tenn. 1991). Similar to the

¹ The decision of the Oregon Supreme Court in *Nutbrown*, *supra*, is discussed in the Petition in this case at 8, 10.

result reached by the Wisconsin Supreme Court in this case, the *Bean* decision is bottomed on the conclusion that states are free in the first instance to condition or deny a § 1983 cause of action.²

These recent developments demonstrate the widening conflict among the states with respect to the obligation of state courts to hear and entertain a federal cause of action created by Congress. Moreover, they further demonstrate a continuing conflict with numerous decisions of this Court. For example in *Bean*, the Tennessee Supreme Court relied heavily upon the pre-*Felder* and pre-*Higgins* state court decision of *Linderkamp v. Bismark School District No. 1*, 397 N.W.2d 76 (N.D. 1986), instead of applying the decisions of this Court. See, e.g., *Felder v. Casey*, 487 U.S. 131 (1988); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 n.10 (1989); *Howlett v. Rose*, — U.S. —, 110 S. Ct. 2430 (1990); *Dennis v. Higgins*, — U.S. —, 111 S. Ct. 865 (1991).

CONCLUSION

For the reasons set forth above and in the petition for certiorari, Petitioners request that their petition for certiorari be granted.

Respectfully submitted,

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² See Petition at 10-14.

